



September 13, 2017

To: House Local Government Committee

RE: HB 4290

Dear Committee member,

The Michigan Environmental Council (MEC) is a coalition of more than 70 member organizations across the state. We oppose HB 4290 because it appears to contradict DEQ standards and emphasizes removing municipal liability for inappropriately sized sewage systems at the expense of personal property.

HB 4290 is intended to absolve municipalities of liability in the event of residential basement flooding/sewer backups. The bill establishes rainfall totals that, if exceeded, are determined to be a quasi 'Act of God' and thus it asserts the municipality is not liable for personal property damage. Effectively, as long as the system meets the capacity requirements outlined in HB 4290 individual residents assume the costs of basement flooding. We are not advocating for municipalities to build unnecessarily large infrastructure that may only be needed every 100 years, nor are we asserting that municipalities are liable for 'Act of God' events. That said we have several concerns regarding HB 4290 related to the lack of guidance for mitigating risk of sewer backups, the determination of where rainfall occurs within the sewage system footprint, the designated rainfall limits, and overall maintenance of sewage systems.

Limited guidance exists in Michigan pertaining to sewage system size requirements for the purpose of preventing residential sewer backups. Absent specific guidance, based on testimony provided on September 6th, HB 4290 utilizes DEQ standards for determining adequate sewage system capacity. Certainly DEQ considers preventing sewer backups when developing sewage system guidance. However, the role of the Department (in this context) is first and foremost to protect against illicit sewage discharges to the Great Lakes. While DEQ standards may offer some protection to homeowners, we take issue with HB 4290 equating standards for protecting the Great Lakes with those needed to protect personal property.

HB 4290 states a "*Sewage disposal system event*" means the overflow or backup of a sewage disposal system onto real property owned or occupied by a claimant except when rainfall, as measured by a generally recognized and accepted method, at or near the affected area or within the sewage disposal system service area was 1.7 inches or more in any 1-hour period or was 3.3 inches or more in a continuous 24-hour period. This definition raises two major concerns.

1) The bill language is vague on exactly where rainfall has to occur for a municipality to be liable. We question what, if any, is the minimum area of rainfall coverage within the sewage system footprint that must be covered in order for the municipality to be covered from liability. Similarly we question where rainfall will be measured within the sewage disposal system. If rainfall occurs in a small corner of the system footprint and not reasonably close to an accurate rain gauge, how is liability determined? Testimony on September 6th contended this would be a matter for lawyers to argue. If the intent behind this legislation is to ultimately lower the amount spent by